

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT**

KIMBERLY GUENTHER,

Plaintiff,

vs.

Yael RAZ M.D./D.O.

Defendant.

CIVIL DIVISION

No.

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff, Kimberly
Guenther

Counsel of record:

Noah Geary, Esquire
Suite 225
Washington Trust Building
30 East Beau Street
Washington, PA 15301
724-222-3788

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AND NOW COMES the Plaintiff, Kimberly Guenther, by and through her attorney Noah Geary, Esquire, and files the within Complaint in Civil Action, averring the following in support:

PARTIES:

1. The Plaintiff, Kimberly Guenther, is an adult individual residing in the County of Allegheny which is located within the Western District.
2. The Defendant, Yael Raz, M.D./D.O., is an adult individual with a place of business at VA Pittsburgh Healthcare System, University Drive Division, University Drive C, Pittsburgh, Allegheny County, Pennsylvania. The Plaintiff is asserting a professional liability claim against this Defendant.
3. It is believed, and therefore averred, that Defendant Raz is a health care provider within the purview of the Medical Care Availability and Reduction of Error Act, 40 P.S. §1303.503.

COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS:

4. It is believed and therefore averred that Raz, at all times material, was an employee of the Department of Veteran's Affairs (hereinafter "VA"). If Defendant Raz is deemed to have been an independent contractor of the VA, this claim is brought against the following entities: the University of Pittsburgh Physicians, a corporation existing under the laws of the Commonwealth of Pennsylvania with offices in Allegheny County, Pennsylvania at 1650 Metropolitan Street, Pittsburgh, Pennsylvania, 15233. At all times pertinent hereto the Defendant was an actual or ostensible agent, servant or employee of this Defendant and was acting in the course of her employment by this Defendant while providing medical service to the Plaintiff; AND UPMC Shadyside, a corporation existing under the laws of the Commonwealth of Pennsylvania with offices in Allegheny County, Pennsylvania at 200 Lothrop Street, Pittsburgh, Pennsylvania, 15213. At all times pertinent hereto the Defendant was actual or ostensible agent, servant or employee of this Defendant and were acting in the course of her employment by this Defendant while providing medical service to the Plaintiff; AND University/UPMC Ear, Nose and Throat Specialists, a professional corporation which specializes as a medical practice group located at Shadyside Medical Building, 5200 Center Avenue, Suite 211, Pittsburgh, PA and is owned by the University of Pittsburgh Medical Center, a non-profit corporation.

5. This lawsuit involves a claim under the Federal Tort Claims Act, Title 28 U.S.C. Sections 1346(b) and 2671-2680, against Defendant Raz for money damages resulting from personal injuries sustained by the Plaintiff due to the professional negligence/medical malpractice of Defendant Raz, who was acting within the scope of her office or employment with the VA under circumstances where the United States, if a private person, would be liable to

the Plaintiff in accordance with the law of Pennsylvania.

6. The Plaintiff has complied with the administrative requirements of the Federal Tort Claims act by timely filing an administrative claim within two years of the date of the professional negligence committed and by filing the instant Complaint in the Western District within six months of the Agency's final denial of her claim.

JURISDICTION AND VENUE:

7. This Court has jurisdiction over the Defendant because this cause of action is filed pursuant to the Federal Tort Claims Act, a Federal Statute.

8. Venue is proper in this court because the actions and omissions giving rise to this Complaint occurred in Allegheny County, Pennsylvania, which is within the Western District.

FACTUAL BACKGROUND:

9. The Plaintiff, age 49, is a Veteran of the United States Navy.

10. In the time period of January through September, 2012 the Plaintiff presented to the Defendant at the VA numerous times with complaints of pain and pressure in her left ear, as well as dizziness.

11. Plaintiff was repeatedly diagnosed by the Defendant as having an ear infection, and was prescribed antibiotics.

12. Plaintiff's symptoms persisted.

13. In approximately September of 2012, the Plaintiff was diagnosed with having an endolymphatic sac tumor.

14. The Plaintiff underwent surgery on or about October 15, 2012 to remove the tumor.

COUNT I: PROFESSIONAL NEGLIGENCE

15. The Plaintiff incorporates by reference thereto Paragraphs 1 through 14, inclusive, of the within Complaint the same as though the same were set forth herein and at length.

16. The injuries and damages sustained by the Plaintiff were the direct and proximal result of the negligence of Defendant Raz in general and in the following particulars:

- (a) In failing to diagnose the Plaintiff as having an endolymphatic sac tumor;
- (b) In repeatedly misdiagnosing the Plaintiff as having a mere ear infection;
- (c) In failing to refer the Plaintiff to the care of a physician who possessed the necessary experience to make a correct diagnosis;
- (d) In failing to perform the appropriate testing upon the Plaintiff which would have revealed the existence of the tumor.

17. As the result of the negligence of the Defendant, the Plaintiff has sustained, inter alia, the following injuries, all of which are of a severe, serious, and permanent nature:

- (a) in developing the tumor;
- (b) in having to undergo surgery;
- (c) in the complete loss of hearing in her left ear;
- (d) in the loss of balance and equilibrium;
- (e) in having to undergo radiation treatments;
- (f) in suffering brain damage;
- (g) in experiencing vertigo;
- (h) pain;

- (i) suffering;
- (j) lost wages, both past and future;
- (k) inconvenience;
- (l) loss of earning capacity;
- (m) the incurrence of medical bills;
- (n) out of pocket losses.

WHEREFORE, the Plaintiff brings this action against the Defendant and requests that this Court enter a judgment in her favor and against the Defendant and requests all damages to which she might be and is entitled to under the Federal Tort Claims Act. To the extent the Plaintiff is entitled to a trial by jury under the FTCA, a JURY TRIAL IS DEMANDED.

Respectfully Submitted,

/s/ Noah Geary
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Suite 225
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VERIFICATION:

I, **Kimberly Guenther**, hereby verify that the facts and statements made in the within **COMPLAINT** are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

February 8, 2017

/s/ Kimberly Guenther
Kimberly Guenther

